

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jon S. Tigar, Judge

MARIE GAUDIN, individually,)	
and on behalf of others)	
similarly situated,)	
)	
Plaintiff,)	
)	NO. C 11-01663 JST
vs.)	
)	
SAXON MORTGAGE SERVICES, INC.,)	
a Texas corporation, and Does)	
1-100,)	
)	San Francisco, California
Defendants.)	Thursday, June 20, 2013
)	

TRANSCRIPT OF PROCEEDINGS

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BY: ERIK WAYNE KEMP

Reported By: Lydia Zinn, CSR No. 9223, Official Reporter

1 **THE CLERK:** Calling Civil Case 11-1663, *Marie Gaudin*
2 *versus Saxon Mortgage Services, Incorporated*. Counsel, will
3 you please make your appearance for the record?

4 **MR. FREDMAN:** Good afternoon, Your Honor.
5 Peter Fredman, for the plaintiff and moving party,
6 Marie Gaudin.

7 **MS. ABOU-RAHME:** Good afternoon, Your Honor.
8 Laila Abou-Rahme, on behalf of Saxon Mortgage Services.

9 **THE COURT:** Welcome. Okay. We have a whole lot of
10 interesting cases this afternoon, including this one. I don't
11 know that I have so much -- I've only brought out some of my
12 notes; I apologize. I don't know that I have so much to tell
13 you, by way of a tentative. Let me just make a few points,
14 though, before you argue.

15 There's lots of discussion from the plaintiffs about what
16 the common questions are, but in the commonality section of the
17 briefs what is said on that subject is the common question is,
18 quote, "Everyone in the class entered into the same TPP with
19 Saxon, and made at least three trial payments it called for,
20 but did not obtain the loan modification." That seems more
21 like a class definition to me, as opposed to a question; a
22 common question.

23 The common question, though, actually permeates the briefs.
24 I mean, the common question that I think plaintiffs want there
25 to be permeates those briefs; and that is whether, once the TPP

1 has been fully executed by both sides, it becomes an
2 enforceable contract. As far as I can tell, that's what they
3 want the common question to be.

4 And if the answer is "No," then all of the class members
5 lose.

6 And if the question is answered affirmatively, then, you
7 know, maybe something else happens.

8 So that's a minor point in some ways; but you can't get to
9 the question of commonality or typicality, unless I can confirm
10 that that's what you think the common question is, even if you
11 agree with the way plaintiffs think the TPP worked in the HAMP
12 process, and all that. So plaintiffs would say, "You don't get
13 to individualized HAMP inquiry, because the TPP was
14 self-enclosed."

15 Even if the Court adopted that position, about 10 percent
16 of potential class members fall out, because there were TPP
17 criteria that were not met. And there is a little percentage
18 chart which I didn't bring with me, but I have a list of the
19 criteria, because for one of them, it's, you know, 1 percent;
20 for one of them, it's 9 percent; for some, it's none. And I
21 don't have those percentages right in front of me, but for
22 example, one person -- I think I want to say it's one person --
23 wasn't able to show that they were in default, or the default
24 was imminent; that sort of thing.

25 So my question for the plaintiffs is: Even if the Court

1 sees it your way about the TPP, don't those 10 percent make it
2 difficult to certify that class? Mightn't I actually just not
3 have a class that includes those people?

4 And then I know we don't have that much time. Probably
5 something with a little more meat on it is: I want to
6 understand all the remedies that the plaintiffs think this
7 class is entitled to, particularly contractual damages; but in
8 general, I don't have it clear in my mind what you think the
9 remedies are that these class members would be entitled to, if
10 the class is certified and if they prevail.

11 I apologize to the defendants. I wish I had more questions
12 for you.

13 I'll let the plaintiff argue first.

14 **MR. FREDMAN:** Your Honor, I think the common question
15 is interpretation of the TPP as a contract, and also as a
16 communication. Even if the TPP is not a contract, the act of
17 signing it and sending it to the class members is deceptive,
18 because they're going to think it's a contract. They're going
19 to think it says what it does appear to say, which is: If you
20 make these three payments, you're going to get this loan
21 modification. So that's the common question; the predominant
22 common question that predominates everything.

23 What does this document mean? Once Saxon signs it and
24 returns it, is it a contract? Is it an enforceable contract;
25 and even if it's not, is it deceptive, under the Rosenthal Act?

1 Is it misrepresenting something under the UCL? Those are
2 common questions.

3 So I don't think we can limit it to the question of whether
4 it's an enforceable contract, both -- but it is -- it does
5 still off all flow from looking at that one document, and
6 interpreting it; construing it under the various legal theories
7 that have been presented to you.

8 With respect to the 9 percent -- the TPP criteria --
9 there -- I spotted one area where they said a certain number of
10 people were offered the loan modifications, and refused them.
11 And the class definition should be modified to exclude that.
12 And that can be done with a single word. And it doesn't really
13 affect the numbers very much. It's a very small percentage.

14 Other than that, you need to interpret the TPP document, as
15 a contract or otherwise, before you can say that these
16 9 percent people, themselves, were in breach of the TPP, or
17 were not legitimately --

18 **THE COURT:** Well, let's take the example of the one
19 person or the one applicant who was not in default or was not
20 able to show -- I think this is close to the language that
21 default was imminent. Do you have that person in mind? Do you
22 have that fact in mind?

23 **MR. FREDMAN:** Yes.

24 **THE COURT:** So how could that person possibly claim
25 that there was a valid or binding contract, when that

1 applicant, by the terms of the TPP, was not able to meet a
2 necessary precondition to performance? And how can that person
3 claim that they're -- that they were misled, when I'm assuming
4 there has to be some element of reasonable reliance? How could
5 they reasonably have relied? They didn't qualify for the
6 program.

7 **MR. FREDMAN:** I don't disagree with that.

8 That's one person.

9 **THE COURT:** So let's throw them out of the class,
10 then, because even their lawyer -- their putative class
11 lawyer -- agrees they shouldn't be in the class. And then we
12 can move to the other criteria.

13 I guess the Court would benefit from hearing from you why,
14 as a matter of class-action management, if nothing else, these
15 10 percent should be in there.

16 **MR. FREDMAN:** For that one person, because it's one
17 person, I think that person should remain in the class.

18 So we can take a little bit more detailed look at Saxon's
19 basis for concluding there was no imminent risk of default.

20 **THE COURT:** All right. Let's take the 9 percent of
21 people, because that will change the metrics.

22 This is from your brief at page 12: The 9 percent of class
23 members who did not receive modifications, because they didn't
24 submit all of the required information.

25 **MR. FREDMAN:** I think they're --

1 **THE COURT:** Are they entitled to a remedy?

2 **MR. FREDMAN:** We need to -- with respect to that,
3 first of all, there's an interpretation of that provision in
4 the TPP that needs to be undertaken, because the TPP -- the
5 process it describes is: I'm sending you the TPP signed by me,
6 my first check, and my tax returns with the package. And when
7 you send it back to me, you're telling me you've got enough
8 information.

9 What -- as I read that provision, 1(d), it says: I am
10 providing or already have provided documentation for all the
11 income that I've received.

12 To me, it's a verification that they're truthfully
13 disclosing all of their income, and not some kind of ongoing
14 obligation to keep providing documents whenever Saxon asks for
15 more documents.

16 And remember. These people are being -- average length is
17 10.5 months of being in this contract that's supposed to last 3
18 months; and you're supposed to get an answer in 1 month. So --

19 **THE COURT:** You agree Saxon doesn't later have the
20 right to toss them out of the program --

21 **MR. FREDMAN:** No.

22 **THE COURT:** -- if they complied with the TPP, because
23 they determined that whatever was sent to them was inadequate?

24 **MR. FREDMAN:** Yes. Exactly.

25 I mean, and there may be some more granular detail, all of

1 which is available in the loan data, that enhances our
2 understanding; but it's all going to start with the Court's
3 interpretation of that provision. Does that provision create
4 an ongoing right for Saxon?

5 Or, first of all, does the TPP -- is it over? After that
6 month, after it's signed, is it over? After three months, is
7 Saxon in breach if it asks for something at Month Eight, and
8 then it says, "Well, you didn't send it. You're out"? That
9 -- you have to decide what the TPP means first, before you can
10 even reach that question.

11 So, you know, for that 9 percent, I think there's clearly
12 issues that are going to flow out of the Court's singular
13 interpretation of the TPP and what it means; and that these
14 different reasons that Saxon's presenting for denying
15 modifications will help frame all of these issues, and help the
16 Court make all of the necessary interpretations of the TPP for
17 the class; but it's all going to be a single document. It's
18 still the single TPP that has a single meaning.

19 And at that point, there may be some people who are not
20 entitled to relief, for one reason or another. And we'll look
21 at that as a matter of general proof through this data; but
22 right now, we're talking 90 percent of the class, who, under
23 plaintiff's theory of the case, none of the reasons matter;
24 another 9 percent where may or may not matter.

25 There's this issue --

1 **THE COURT:** Let's talk about remedy.

2 **MR. FREDMAN:** Yes. The most obvious remedy is
3 restitution. And I realize that's controversial, but in going
4 over --

5 **THE COURT:** And you mean of late fees?

6 **MR. FREDMAN:** Certainly of late fees, as a
7 contractual remedy; but of TPP payments. If the TPP was
8 deceptive, and it violated the Rosenthal Act --

9 **THE COURT:** Yes.

10 **MR. FREDMAN:** -- then they continued making payments,
11 based on an unlawful document -- as the result of an unlawful
12 document, and those payments are subject to restitution -- the
13 same would be true for UCL fraud; fraud prong -- the same --
14 the same concept is raised with respect to the idea that we are
15 entitled to --

16 **THE COURT:** Actually, I'm not sure I would agree with
17 you, but I also am not sure that I need to decide that today.

18 In other words, the reason I asked what all of the remedies
19 were is so that I can include that in how I think about this
20 case under Rule 23; and that is, "Is the remedy that you think
21 people are entitled to feasible on a classwide basis, and are
22 there, kind of, case-management concerns?" and not, "Do I think
23 they're legally entitled to it?"

24 The question of restitution of TPP payments is interesting,
25 because it begs the question of, you know, what is the

1 reliance. What is the change in position that I typically
2 think of as being the basis for some kind of relief?

3 Presumably, an applicant was paying more per month than
4 they were under the TPP. Certainly, they weren't paying less.
5 And so the idea that they are made worse off by making these
6 TPP payments -- oh, there was a deceptive communication, so
7 they made these TPP payments. Well, what would they have made?
8 They were under an obligation to make their monthly mortgage
9 payment.

10 But I'm bending your ear about something that I don't know
11 that I need to decide today.

12 **MR. FREDMAN:** That's a variation on the preëxisting
13 debt question, which is a predominant common question, if --
14 because they weren't making -- you know, their decision to
15 actually send the money definite -- send this money happened as
16 a result of this TPP.

17 **THE COURT:** I don't think, by the way, that that's
18 the same thing as the consideration point that the defendants
19 make. I think that's totally different. I'm thinking that
20 might be where you're going.

21 **MR. FREDMAN:** So we start off with: The most obvious
22 remedy is Rosenthal statutory damages.

23 There's restitution, through the rescission mechanism.

24 And -- and, very briefly, again, it's a common question,
25 but rescission -- whether rescission depends on return of some

1 consideration depends on the Court's interpretation of the
2 document and what the consideration was.

3 They're trying to say the consideration was the discount;
4 but there really was no discount for these class members. They
5 didn't -- their mortgage obligation stayed the same. They
6 still owed the money.

7 So there's various methods to get at restitution. The UCL
8 is probably the most straightforward, under California law. We
9 know -- I understand the issues around that, but it's certainly
10 a very common question that predominates.

11 There's -- that's how I see this case going, is probably
12 cross-motions for summary judgment on those issues. And then
13 if no restitution is available, then we need to start looking
14 at contract damages. There's certainly the late fees. And
15 there may be other more individualized damages that we need to
16 take a look at, at that point.

17 I think the law is clear -- and increasingly clear in this
18 Circuit -- that the need for individualized damage
19 computations, itself, is not going to upset class
20 certification; and certainly not at this point, where there is
21 no present need for those individualized calculations.

22 There's -- you know, we -- the Court's obviously going to
23 manage this case as it sees fit. And we can get past that
24 first threshold of determining whether restitution is available
25 before we address what other remedies are available and whether

1 there is a breach of a contract, before we can address whether
2 there is -- what other particular remedies there might be, and
3 how to manage them.

4 **THE COURT:** Thank you, Mr. Fredman.

5 Ms. Abou-Rahme, am I pronouncing your name correctly?

6 **MS. ABOU-RAHME:** That's correct.

7 **THE COURT:** Thank you.

8 **MS. ABOU-RAHME:** Thank you, Your Honor. May it
9 please the Court.

10 Your Honor said you read the papers and the briefs, so I
11 would like to focus my time, instead, on addressing some of the
12 concerns you raised before Mr. Fredman spoke, as well as some
13 of the points Mr. Fredman raised in the reply brief; but if
14 Your Honor has any specific questions for me, please let me
15 know.

16 I guess if I could take a minute to just put in this in
17 context -- I know I only have ten -- but understand what is
18 actually happening here, and what Ms. Gaudin is really saying;
19 what the plaintiff here is saying.

20 This was a Department of Treasury program. It was directed
21 by the Department of Treasury. Saxon signed a contract with
22 the Department of Treasury that required it to abide by the
23 Department of Treasury's directives, criteria, and guidelines.
24 Saxon did not have discretion on any of the facts that are
25 relevant to this case. Whether somebody qualified or didn't

1 qualify was up to the Department of Treasury.

2 And what plaintiff is really saying is: Even though it was
3 the Department of Treasury that specified the eligibility
4 rules, she wants to hold Saxon responsible if those rules don't
5 produce the outcome she and others may have wanted. In fact,
6 she's asking this Court to find Saxon responsible, because she
7 believes that the Treasury's form of notice, which is what the
8 TPP is, was inherently deceptive. This is a classic case of
9 shooting the messenger. And the law doesn't permit that,
10 particularly as a class action.

11 But I want to address the points Your Honor raised; and
12 commonality being one of the key ones. I think Your Honor is
13 absolutely right that the only common question that I have seen
14 in any of plaintiff's briefs is whether the contract -- whether
15 the TPP is an enforceable contract; and if so, how you
16 interpret its various provisions. And that's simply not
17 enough, because you don't certify a class to decide if
18 something is a contract. You certify a class to determine
19 liability.

20 And issues are sometimes certified by issue if it's, you
21 know, we'll certify a class as to breach of contract, or we'll
22 certify as to liability and split up damages. I've never seen
23 in any cases I've read a class certified as to one element of
24 one cause of action, which is what this is really all about.
25 All it gets you is: Is this a contract?

1 If it's a contract -- I mean, even if we assume for these
2 purposes that it's a contract that promised permanent
3 modification, there is no way to avoid the individual inquiry
4 that would be required, which is: Was the contract breached?

5 Plaintiff doesn't deny that there are conditions.
6 Your Honor recognized conditions on the face of the TPP that
7 have to be met.

8 The only way to answer if there was a breach is to look at
9 every one of these borrowers, and see. Did they fulfill every
10 one of these conditions; and if not, what was the reason?

11 **THE COURT:** You're referring to the TPP -- the six
12 conditions outlined in the TPP, itself; not the other
13 requirements that you argue might have been necessary to
14 receive a modification? Or are you --

15 **MS. ABOU-RAHME:** Correct, Your Honor, except it's not
16 just in Section 1; it's in Section 2, as well. And if --

17 I brought the TPP up with me, which I believe -- here we
18 go. In Section 3 of the TPP it actually says -- and plaintiff
19 quoted this in his brief -- "If I comply with the requirements
20 in Section 2, and my representations in Section 1 continue to
21 be true." So it's not just the representations in Section 1,
22 but there are requirements in Section 2, which are beyond
23 making the three payments. They go A through G.

24 So I am limiting, for purposes of this discussion, to the
25 TPP, itself; although I would like to note that in plaintiff's

1 First Amended Complaint, plaintiff recognizes requirements
2 beyond the TPP. Paragraph 1 of plaintiff's First Amended
3 Complaint recognizes that this HAMP was an income-based
4 program. In paragraph 2 and paragraph 19, plaintiff recognizes
5 that she had to have made her three monthly payments, "and
6 satisfied various other requirements under the objective HAMP
7 guidelines," I believe, is the quote.

8 Elsewhere in the Complaint -- in 51(c), I believe -- he
9 refers to it as "the uniform HAMP guidelines." So -- but
10 that's an aside.

11 So I think plaintiff has admitted there are requirements
12 beyond the TPP in the Complaint, even though, for purposes of
13 its class-certification motion, they've steered away from that;
14 but even if we go with their new version that it's just the
15 TPP, that --

16 **THE COURT:** Judge Seeborg has had something to say
17 about this, also.

18 **MS. ABOU-RAHME:** Correct.

19 **THE COURT:** This question.

20 **MS. ABOU-RAHME:** Judge Seeborg recognized that there
21 are contract conditions on a very face of the TPP that have to
22 be met, and that it, by no means, on its own, was promising a
23 permanent modification.

24 And I think the -- excuse me, Your Honor. I think the
25 issue with the 9 percent, just to go for a minute to the class

1 size -- the 9 percent -- and this is our failing, I'm sure; but
2 the declaration that Ms. Monsivais submitted, where -- from
3 which plaintiff got this, you know, 10 percent fit into one or
4 the other category -- this was, by no means, an exclusive list.
5 It doesn't mean that the other 90 percent of the class had no
6 reason.

7 And she explains in her declaration, Saxon was required to
8 give Treasury our report. And by looking at that report, there
9 were these easy buckets. And these were sort of examples of
10 hundreds of people or nine people or however many it was in
11 various of these buckets; but you would still have to look at
12 every individual to see what other reason there was, and
13 whether that was a legitimate reason under the TPP, or not.

14 And, in fact, the conversation with Mr. Fredman earlier
15 proves plaintiff's point -- proves defendant's point that
16 it's -- there is no way to get around the individual inquiry.
17 I mean, you have to look at: Did this person live in the
18 property? Did this person give the deed that was required?

19 And the other issue about the reports -- I know Mr. Fredman
20 likes to say that these are all readily available in Saxon's
21 computers, but this --

22 **THE COURT:** I'm not going to say this exactly in the
23 right way. It's going to be inartful, but hopefully I can
24 communicate the essence of the question. Let's say that the
25 Court were to certify a class of persons who signed the TPP,

1 submitted the required information, made three payments, got a
2 signed TPP back from Saxon, and were not deemed to have
3 violated any of the conditions contained in Section 1 or 2.

4 Now, I don't know whether there would be anybody left,
5 but -- and I'm not saying that that's your proposal. I
6 understand that you think that that would not be a certifiable
7 class; but if I did do that, wouldn't it obviate the problem
8 that you're now describing?

9 **MS. ABOU-RAHME:** It wouldn't, Your Honor, only
10 because the only way to figure out what that remaining bucket
11 is, is by looking at each individual file.

12 These -- the reasons that were given in Ms. Monsivais'
13 declaration -- the requirement by Treasury was to give a reason
14 for denial. It did not require them to give all of the reasons
15 for denial, and it did not require them to correct the reason
16 for denial if there was an error.

17 For example, in Ms. Gaudin's case, it was reported as, "Did
18 not make her trial payments," which was an error that was
19 corrected. It wasn't corrected in this record. So these
20 numbers in this declaration is what was reported to Treasury,
21 based on the information available when they reported it, and
22 based on what was required. So for --

23 **THE COURT:** I hope I'm not stating the obvious, but I
24 probably am. I gather that everybody in the proposed class, as
25 you understand it to be framed, did have a modification denial?

1 **MS. ABOU-RAHME:** Everybody in the proposed class had
2 a modification denial, except for some, who -- who refused a
3 modification. So it includes people -- it's everyone who did
4 not get a modification, whether it's because they were denied,
5 or because they found some other alternative.

6 But Your Honor, if I can get back to your question, even if
7 someone signed a TPP, made three payments, and were not deemed
8 to have violated any of the conditions of the TPP, then you get
9 into the problem of the ascertainable class, because to
10 identify those individuals, you would have to look at every
11 loan file for every one of the 2,700-some individuals to see if
12 anyone even fits in with that. So that would be Step 1.

13 And Step 2 would still be that you can't get away from the
14 individualized proof. Even if you get to, let's say, ten
15 people who did not violate something in the TPP, but violated
16 something in the HAMP objectives or the guidelines, and the
17 Court decides that those are not relevant, then you still can't
18 get around the damages issue.

19 And I'd like to address that for a second, if I may,
20 because I know that damages, themselves, are not -- do not
21 preclude class certification; but they do require, especially
22 after *Comcast*, that the plaintiff be able to identify how the
23 plaintiff class was damaged as a result of the conduct, and
24 whether those damages can be determined on a classwide basis,
25 without looking at each individual's individual circumstances.

1 And there's no way that can be done here.

2 And even the cases that plaintiff cites where they say
3 damages can be a separate inquiry, there is still at least a
4 method by which the damages can be calculated. There's either
5 some kind of a formula, or there's a mechanical way in which to
6 do it. And plaintiff hasn't offered anything here that works.

7 The return of TPP payments, leaving aside the problem of
8 the preëxisting debt -- the return -- you can't just return the
9 money, without seeing what the damages were. I mean, this is
10 not -- they have to have shown how they were damaged.

11 For example, if somebody who made TPP payments for six
12 months beyond the three months -- during those six months, you
13 have to look at what benefit they got from those reduced
14 payments. Were they able to pay down a credit-card bill? Were
15 they able to avoid losing their car?

16 There are many short-term benefits that you'd have to look
17 at -- were they able to stay in their home longer than they
18 otherwise would have? -- that you would have to look at before
19 you decide what they are entitled to receive in return.

20 In other words, even if you ignore the preëxisting debt,
21 it's not just a matter of: Here's your money. It's: Well,
22 what did you benefit from when you were paying the reduced
23 payments? And you have to take all of that into account.

24 And Mr. Fredman -- you know, they didn't submit an expert
25 report, which we did, which really talks to how particularized

1 the damages issue is in this case.

2 So have I answered your question, Your Honor?

3 **THE COURT:** I think you have. I actually need to ask
4 you to wrap up. I have some people waiting patiently in the
5 back of the courtroom who, I'm sure, are really anxious.

6 **MS. ABOU-RAHME:** Okay. Thank you, Your Honor.

7 Just the last thing I want to say about damages is the
8 Rosenthal Act; the statutory damages. To me, that's a red
9 herring. That is a cap on the amount of damages plaintiffs may
10 collectively receive. It doesn't mean they're automatically
11 entitled to \$500,000 if there's a violation of the
12 Rosenthal Act.

13 And the last point I would like to make is: The
14 individualized issues pervade not just the breach-of-contract
15 claims, but also the Rosenthal Act and the UCL, for the
16 following reasons.

17 If you're going to look at what -- for Rosenthal Act, the
18 least-sophisticated investor -- how he would have interpreted
19 the TPP, you have to look at the whole picture. And the whole
20 picture is the TPP, with the letter, with the phone calls they
21 all had before they got the letters, with the communications
22 that each of them subsequently had with Saxon, which were
23 numerous. There's -- you don't just look at the contract. If
24 we're talking about Rosenthal Act and if we're talking about
25 the UCL, you have to look at the complete picture. And there's

1 no way to look at the complete picture here, without looking at
2 each individual's circumstances.

3 And I think not only do *Wal-Mart* and *Comcast* require a
4 denial in this case, but the Ninth Circuit decision in *Wang*
5 *versus Daily News* --

6 (Reporter requests clarification.)

7 **MS. ABOU-RAHME:** *Wang versus Daily News.*

8 And the District Court has several decisions -- in *Campion*,
9 in *Hanni*, and in *Faulk* -- that all go to the fact of -- in UCL,
10 in breach of contract.

11 And then there's a decision, *O'Donovan* --

12 **THE COURT:** Ms. Abou-Rahme, I don't want you to sit
13 down now, but I'm going to ask you to, anyway.

14 **MS. ABOU-RAHME:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 Mr. Fredman, in three sentences, tell me why Ms. Abou-Rahme
17 is wrong with her point that the list that's in your brief of
18 the various reasons why some people didn't get modifications is
19 not a complete list, and so just determining whether there was
20 individual compliance with the TPP requirements, themselves,
21 will require a file-by-file examination. Tell me why that's
22 wrong.

23 **MR. FREDMAN:** Their statement that they can give the
24 wrong reason to Treasury for denying a modification is pretty
25 suspect.

1 **THE COURT:** That isn't the question I asked you, so
2 I'm going to ask it again, because our time is short.

3 **MR. FREDMAN:** Yes.

4 **THE COURT:** And if I've misunderstood your opponent's
5 argument, or her argument's not based on the law, tell me that;
6 but I think what I said was a little different.

7 I heard your opponent to say that, even limiting the
8 question to the four corners of the TPP, as you're asking the
9 Court to do, that there were more requirements than simply
10 filling out the form, sending in the information, and signing
11 it, and getting a signed TPP back; that there were more things
12 that people had to do, under the Treasury program.

13 And if that's right, then, in order to determine whether
14 the defendants violated anybody's rights, you'd have to go
15 through each file to just see: Did they comply with the TPP
16 requirements, or was the denial based on something else?

17 And my question for you is: Are they incorrect in their
18 construction of the TPP when they say, "No. There were other
19 things that individual borrowers had to do, which were a
20 legitimate basis for denial"?

21 And maybe they were incorrect, and that's the end of the
22 inquiry.

23 Or if they're not incorrect, why wouldn't the decider in
24 the case have to go through each file individually?

25 **MR. FREDMAN:** I understand.

1 Were there other qualifications to get into the HAMP
2 program, so that Saxon could get its subsidy?

3 Yes.

4 Inside the TPP, were there other conditions?

5 No, in terms of: There were no other conditions, than the
6 ones we've described. And they're on the face of the TPP.

7 In terms of the idea that she said, well, maybe this list
8 we've given incomplete; we could have had other reasons -- and
9 if they want to go give those other reasons, just like they
10 gave these reasons, that's fine.

11 And that doesn't preclude class certification: The fact
12 that they have to figure out what other reasons they might have
13 had that they didn't list for denying the modification, if I
14 understand that correctly.

15 They've given -- in other words, for every single person,
16 they've given the reason they denied it. And they don't
17 matter. And they're saying there might be other reasons we
18 denied modification.

19 If that's the case, that's evidence. And they can --

20 **THE COURT:** Your belief is that when somebody
21 executed the TPP -- when they signed it -- and they submitted
22 the information that was required, if they got it back signed,
23 at that moment Saxon was obligated to give them a loan
24 modification. True?

25 **MR. FREDMAN:** If they made the three payments.

1 That's exactly what the TPP says.

2 **THE COURT:** I think that may be where the parties
3 disagree on this.

4 I'm enjoying this hearing very much, but unfortunately --
5 and the briefing. May I just say the briefing on both sides
6 was quite good, really. And I wish you were the only thing on
7 the calendar, but you're not.

8 **MR. FREDMAN:** Thank you.

9 **THE COURT:** So I'm going to take this under
10 submission. Thank you.

11 (At 3:48 p.m. the proceedings were adjourned.)

12 I certify that the foregoing is a correct transcript from the
13 record of proceedings in the above-entitled matter.

14 
15 _____ June 29, 2013
16 Signature of Court Reporter/Transcriber Date
17 Lydia Zinn

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